IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4102 OF 2006.

The Heirs Arif Baputty of
Mrs.Saeeda I.F.Baputty
and another. ... Petitioners.

V/s.

Saifee Zainoodin Khambati
and others. ... Respondents.

A.N.Nasikwala for the petitioners.

Miss J.P.Thakkar for the respondents.

CORAM: V.C.DAGA, J.

DATED: 19th September 2006.

P.C.:

. Heard learned counsel for the rival parties.

. Perused petition.

2. Rule, returnable forthwith by consent of parties.

. Miss Thakkar waives service for the respondents.

3. This petition is directed against the order dated 26th April, 2006 in Revision Application No.189/2005 in Interim Notice No.3027/2004 in R.A.E. & R. Suit No.1149/1897 of

2002 passed by the Division Bench of the Small Causes Court at Mumbai; whereby revision was rejected and order of trial Court dismissing notice was upheld.

4. Having seen the impugned order, it is no doubt true that the original defendant failed to file written statement within prescribed period. However, in view of circumstances described in the motion for extension of time to file written statement, the trial Court ought to have extended period for filing written statement. The suit is yet to go for trial. The parties are at the stage of examination of documents. In this view of the matter, no prejudice would be suffered, if the written statement is allowed to be taken on record. This will obliterate possibility of remand by higher court in future. However, for the lapse on the part of the defendants, the defendants cannot have absolute order enabling them to file written statement on record. It has to be with certain conditions, so as to compensate the prejudice suffered by the respondents-plaintiffs.

5. In the above view of the matter, petitioners- defendants are permitted to file their written statement on record, subject to

deposit of, on account, an amount in the sum of Rs.10,000/- with the trial Court to be adjusted towards suit claim under the head "arrears of rent", subject to final decree in the suit. This deposit shall be without prejudice to the right of either of parties. In addition to deposit of Rs.10,000/-, petitioners- defendants shall also deposit costs quantified in the sum of Rs.5,000/- for delayed filing of the written statement. In toto, petitioners shall deposit Rs.15,000/- with the trial Court within two weeks from the date of receipt of copy of this order, failing which, this petition shall be deemed to have been rejected.

6. It is needless to mention that, in the event of compliance of this order, it would be open for the respondents- plaintiffs to withdraw the amount of Rs.10,000/- deposited by the petitioners and hold it in Trust on account towards claim of arrears of rent without any liability to pay interest thereon and balance amount of Rs.5,000/- towards costs awarded by this Court in their favour.

7. Petition is allowed. Rule is made absolute in terms of this order with no order as to costs.

(V.C.DAGA, J.)